

PETITIONER:
YASHRAJ GOVINDBHAI PATEL & ORS.

Vs.

RESPONDENT:
PATEL ENGINEERING CO.LTD. & ORS.

DATE OF JUDGMENT 25/07/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
AHMADI A.M. (CJ)
BHARUCHA S.P. (J)

CITATION:
1995 SCC Supl. (3) 307 JT 1995 (5) 535
1995 SCALE (4) 567

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
MAJMUDAR, J.

Leave granted.

By consent of learned counsel for parties, the appeal was finally heard. A short question centring round clause 21.3(a) of the consent terms filed by parties in Company Appeal 2/94 before the learned Company Judge, Bombay High Court falls for determination. The said clause reads as under:-

<SLS>

"the valuation per share made by the expert shall be deemed to be the valuation per share made under the consent order (including the consent terms) dt 5.3.93 passed by the CLB."

<SLE>

A few facts leading to this appeal may be noted at the outset. Respondent No.1, Patel Engineering Company Limited, is a public limited company registered and incorporated under the Companies Act. The shares of the company are closely held between two groups who are contesting parties before us. Appellants nos.1 to 5 represent one group and Respondents nos.2 to 8 represent the other one. We shall refer to the respondents' group as Pravin Patel group and the appellants' group as K.Y.Patel group for the sake of convenience. K.Y. Patel group filed Petition No. 28/91 in October, 1991 before the Company Law Board under the provisions of Sections 397 & 398 of the Companies Act, 1956. They contended that the affairs of the company were conducted in a manner prejudicial to the interest of the company and public interest. They also sought for a direction that the resolutions passed at the Extraordinary General Meeting should not be given effect to. The parties arrived at consent terms signed on February 11, 1993 before

the Company Law Board and in pursuance thereof the company Law Board disposed of the petition by its consent order dated 5.3.93. The consent terms provided that both groups would deposit their shares with Company Law Board and one Shri.M.Vatsaraj would determine the fair value per share. Accordingly, K.Y. Patel group, that is the appellants' group deposited 91,702 shares and the respondents' group, that is Pravin Patel group deposited 1,04,299 shares. Clause 21 of the consent terms reads as under:-

<SLS>

"Agreed and ordered that the Company do pay the value per share as determined by the valuer for the shares belonging to K.Y.Patel Group and the supporters of K.Y. Patel group in manner following. The said instalments shall include interest on the outstanding amount at 15% per annum from the date of the valuer's decision. The amounts so paid by the company shall remain deposited with M/s. Mulla & Mulla & Craigie Blunt and Caroe till the entire amount has been paid and the said shares have been duly delivered by Company Law Board to the company.

(i).....% within.....month/months of the receipt by the Company of the Valuation report but at any rate not before 1st April, 1993 plus interest on the entire amount at 15% per annum from the date of the decision till the date of the payment of the instalment.

(ii)% within.....months of the receipt by the Company of the Valuation report plus interest on the outstanding amount at 15% per annum from the date of the payment of first instalment till the date of the payment of the second instalment.

(iii) the balance.....% withinmonths of the receipt by the Company of the Valuation report plus interest on the outstanding amount at 15% per annum from the date of the payment of the second instalment."

<SLE>

As per clause 16 of the consent terms one Shri.Mangalbai Vatsaraj, partner of M/s. Vatsaraj & Company, Chartered Accountants being the auditor of Respondent no.1 company was appointed for valuation of shares of Respondent no.1., company. as per clause 19 it was agreed that the valuer shall report to the Board his decision as to the valuation per share and forward copies thereof to the company as also to M/s. Mulla & Mulla & Craigie Blunt & Caroe, Advocates for the K.Y. Patel group and M/s. Bachubhai Munim & Co., Advocates for the Pravin Patel group. As per clause 23 it was agreed that on the company making full payment with interest for the said shares the said shares shall be delivered by the Company Law Board to the company and shall stand cancelled. Thus on the payment being made by the company as per clause 21 K.Y.Patel group, that is the appellants' group had to walk out of the company. However, there was a default clause provided by clause 28(a) in the consent terms which reads as under:-

<SLS>

"In the event of the company failing to make payment of the full purchase price, or of any two of the instalments of price on the dates fixed by clause 21 above, the company shall lose its rights to purchase the shares of the K.Y. Patel group and the petitioners shall automatically be entitled to purchase the shares of the Pravin Patel Group (i.e. shares listed in part 1 of Schedule II and such shares listed in part II of Schedule II in respect of which written confirmations and undertakings have been furnished as aforesaid) at the price per share fixed by the Valuer under clause 16 above. The date of the last instalment or the date of the second instalment in respect of which the default has been committed, whichever is earlier, shall be the date on which the petitioners shall automatically be entitled to purchase the said shares and such date shall be referred to as "the date of purchase".

<SLE>

It is not in dispute between the parties that the Company Law Board fixed the instalments of the purchase price of the shares of K.Y. Patel group as provided by clause 21 of the consent terms by directing that 30% of the amount be paid within two months of the receipt of the valuation report but at any rate not before 1st April, 1993 plus interest on the entire amount at 15% per annum from the date of the decision till the date of payment of instalment. The second instalment was fixed by providing for payment of 40% within 6 months of the receipt of valuation report plus interest on the outstanding amount at 15% per annum from the date of the payment of the first instalment till the date of the payment of the second instalment and the balance of 30% was ordered to be paid within 9 months of receipt of valuation report plus interest on the outstanding amount at 15% per annum from the date of the payment of the second instalment. Accordingly, the dates of instalments worked out are as under:-

1st instalment - 30th November, 1993

2nd instalment - 31st March, 1994

3rd & last instalment - 30th June, 1994

As Shri.M.Vatsaraj valued the shares at Rs.194/- per share by his report dated 30.9.93 Respondent no.1, company tendered on 1.10.93 the entire amount and purported to cancel the appellants' shares even before the same has been delivered by the Company Law Board. The amount tendered was not accepted by the appellants. On 7.10.93 the appellants filed Application 259/93 before the Company Law Board impugning the valuation of shares as made by Shri.M.Vatsaraj alleging it to be vitiated by fraud relying in particular on the affidavit of Chartered Accountant, Shri. Dilip Thakker. The Company Law Board by order dated 5.11.93 overruled Respondent no.1's preliminary objection to the maintainability of the aforesaid application. Thereafter, on 14.12.93 Respondent no.1 filed Company Appeal 2/94 under Section 10(F) of the Companies Act against the order of the Company Law Board. The appeal was admitted by the learned Company Judge of the High Court and interim orders were made protecting the interests of both parties. The amount of Rs.1,77,92,128 tendered by the company was permitted to be

invested. At the time of final hearing of the appeal the contesting parties came to further consent terms pursuant to which a consent order was made whereunder Shri.N.V.Iyer of CC Chokshi & Co. was appointed as an expert to examine whether the valuation made by Shri.M. Vatsaraj on 30.9.93 was proper and correct. The order provided that if Shri Iyer came to the conclusion that Shri. Vatsaraj's valuation was not proper and correct, then he should himself make the valuation. The expert was requested to decide before 13th June, 1994. as noted earlier clause 21.(3) (a) of these consent terms provided that valuation per share made by the expert that is Shri Iyer shall be deemed to be the valuation per share made under the consent order dated 5.3.93 passed by the Company Law Board.

On 21st October, 1994 Shri Iyer held that Shri Vatsaraj's valuation was not proper and correct and he valued the shares at Rs.450/- per share as against Shri.Vatsaraj's valuation of Rs.194, that is Rs.4,12,65,900 for 91,702 shares. The first respondent, company offered the said amount with interest, only from 21.10.94, the date on which Shri Iyer gave his report. The appellants contended that as per clause 21 of the consent order of 5.3.93 read with clause 21.(3) (a) of the consent order dated 21.4.94 the appellants were entitled to Rs.4,12,65,900 and a further sum of Rs.66,13,850 being the interest payable thereon from 30.9.93, the date of Shri Vatsaraj's decision and that the amount tendered by the company did not constitute full payment as required under the consent terms. On 9.11.94 Company Appeal 2/94 was disposed of by taking the valuation of Rs.450 per share on record. The appellants contended that if full amount including interest from 30.9.93 as required by clause 21 was not paid the consequences of default as provided in the consent terms would follow. The company's advocate however informed the appellants that the amount of interest was to be paid only from 21.10.94. Under these circumstances, the company filed Company Application 411/94 in disposed company appeal for clarification. The learned Single Judge of the High Court however rejected the said application on 14.11.94 observing that the order of 5.3.93 subject to modification by the order of 29.4.94 would have to be executed in the manner available in law. Under these circumstances, the company preferred Appeal 891/94 challenging the order of the learned Single Judge dated 14.11.94. The said appeal was allowed by the Division Bench of the High Court. It took the view that interest was payable by Pravin Patel group only from 21.10.94 and directed the Company Law Board to deliver the appellants' shares to the company. The aforesaid order of the Division Bench has been challenged by special leave.

Shri Nariman, learned counsel for the appellants contended that clause 21.(3) (a) of the consent terms of 29.4.94 will have to be read with clause 21 of the consent terms of February, 1993. It has to be held that the valuation made by Shri M. Vatsaraj was superseded by the valuation made by Shri Iyer and therefore the correct valuation of the shares of the appellants will have to be taken as Rs.450/- per share and that figure will have to be treated to have been arrived at on 30.9.93 itself. Consequently, 15% interest on the purchase price as per valuation of shares will have to be interest from 30.9.93 and not from the date on which Shri Iyer gave his valuation' report on 29.10.94. If that is so, the respondents' company was in default in not paying interest on the additional amount to the tune of Rs. 66 lakhs. As a sequel to the aforesaid submission Shri Nariman further contended that

once that happened the default clause 28(a) of the consent terms got attracted and therefore automatically the appellants' got a right to purchase the shares of the respondents' group and that the High Court had patently erred in holding that the interest on the additional amount was payable only from the date of Shri.Iyer's valuation dated 29.10.94. Refuting these submissions Shri Soli Sorabjee, the learned counsel for the respondents contended that clause 21.(3) (a) of the consent order of 29.4.94 provided that the valuation of the shares as made by Shri Iyer will be deemed to be the valuation per share made under the earlier consent terms. But it had nothing to do with the interest amount payable on the valuation of the share price computed by the expert. Shri. Sorabjee further contended that if Shri Nariman's contention is right and 15% interest is to run from 30.9.93 then an impossible and anomalous position would arise. He submitted that in such a case even assuming that Pravin Patel group had committed default it would be impossible to work out the right of the appellants' group to purchase the shares of Pravin Patel group as per default clause 28(a) itself, as the date of purchase by the appellants' group as per the said clause would be the date of last instalment or second instalment in respect of which the default is deemed to have been committed by the company, whichever is earlier. In such a case as per sub-clause (c) of clause 28 the appellants' company would be liable to pay up the entire purchase price of the shares of Pravin Patel group as per the instalments laid down therein and these instalments will have to be paid within the concerned months of the date of purchase by the appellants. These dates were already left behind when the valuation of Shri Iyer was made. Consequently, it would be impossible even for the appellants to comply with the scheme of instalments of paying the purchase price with interest even as per default clause 28(c) of the consent order of 5.3.93. Giving retrospective effect to the valuation by the force of the deeming fiction as found in clause 21.(3) (a) of the consent order of 29.4.94 also for the purpose of interest would therefore make the scheme of default clause totally unworkable for both the groups. He however fairly stated that the respondents in order to bury the hatchet will have no objection in paying even now an amount of Rs.66 lakhs more to the appellants' which may meet their alleged grievance about non-payment of interest from 30.9.93 till 21.10.94 and the respondents are willing to pay this additional amount and put an end to this litigation. They have also no objection to the appellants retaining even the additional amount of Rs.11 lakhs which is already deposited by the respondents uptill now to cover the interest amount. In short, according to Shri Sorabjee the respondents are willing to pay a total amount of Rs.77 lakhs to the appellants towards the disputed claim of interest. He further contended that clause 28 being a default clause has to be strictly construed on the express wording of the default clause, there is no provision made for any adverse consequence flowing from the alleged non-payment of full amount of interest and that the default clause would operate only if the company fails to make payment of full purchase price or any of the two instalments as fixed by the Company Law Board under clause 21 of the consent terms of February, 1993.

Having given our anxious consideration to rival contentions we find that there is substance in what Shri Nariman submits to the effect that clause 21.(3)(a) of the consent terms dated 24.4.94 will have to be read in

conjunction with clause 21 of the consent terms of February, 1993. Therefore, the valuation of shares at Rs.450/- per share as made by Shri Iyer will have to be treated to have been made under the consent order dated 5.3.93 passed by Company Law Board. As the other clauses of the consent terms have remained untouched, it may prima facie be felt that 15% interest would become payable on the valuation per share as made by Shri Iyer on 21.10.94 right from 30.9.93, the date on which Shri Vatsaraj made lower valuation and which got superseded and substituted by the later valuation of Shri Iyer. However, it is not necessary for us to closely examine this aspect of the matter and reach any final conclusion thereon, in view of the fair stand taken by the learned counsel Shri Sorabjee. Once the respondents have agreed before us to pay a total amount of Rs. 77 lakhs as interest towards the disputed dues and once they are prepared to pay Rs.66 lakhs in addition to Rs.11 lakhs which are already deposited by them the first grievance made by Shri Nariman would pale into insignificance.

However, so far as the second contention of Shri Nariman is concerned it is not possible to agree with him that the default clause 28 got attracted on the facts of the present case. The reasons are obvious. The default clause has to be strictly construed. A close examination of default clause makes it clear that the consequence provided therein would follow if the company fails to make payment on full purchase price or of two instalments. It has to be recalled at this stage that clause 21 of the consent terms makes a clear distinction between the value per share as determined by the valuer and the interest on the outstanding amount of such valuation. When clause 21 is read with clause 28(a) it becomes clear that even though the instalment may include interest at 15% that interest is to run on the entire amount of valuation of shares, namely, the purchase price of the shares as determined by the valuer. The default clause 28(a) provides that the company will be liable to suffer the consequence of default in payment of full purchase price or instalment of the price. It nowhere refers to the default in payment of interest on the concerned instalment even though each instalment of purchase price was to be accompanied by 15% interest thereon as laid down by clause 21 of the consent order. In any case it must be held that the respondents appeared to have bona fide believed that they were not liable to pay interest at 15% on the difference amount as per higher valuation of Shri Iyer from any date prior to 29.10.94. Not only that they also approached the learned Single Judge by filing Company Application 411/94 on 14.11.94 requesting the learned Single Judge to clarify as to from which date they have to pay interest. That shows the respondent company, had not taken up any cantankerous attitude and at the earliest opportunity within one month of the report of the valuation they filed Company Application 411/94 for clarification. It was that application which was rejected by the learned Single Judge and which resulted into the appeal from which the present proceedings arise. It cannot be therefore said that the respondent company had deliberately and knowingly defaulted in payment of interest which attracted default clause 28(a) of the consent terms. The second contention canvassed by Shri Nariman therefore stands rejected.

In the result this appeal is disposed of subject to the direction to the respondents as agreed to by them that they will pay to the appellants an additional amount of Rs.66 lakhs in the manner provided by the consent terms of February, 1993 and as laid down by the consent order dated

5.3.93, within a period of eight weeks from today. The amount of Rs.11 lakhs already deposited by the respondent will also enure for the benefit of the appellants. On payment of this additional amount of Rs.66 lakhs the directions contained in the judgment under appeal shall become operative and shall be carried out by all concerned. There will be no order as to costs.

JUDIS